

CR 358/1998

BEFORE

THE HON'BLE MR JUSTICE T.N.K. SINGH

Heard Mr V.K.Bhatra, learned counsel appearing for the petitioner as well as Mr J. Sarmah, learned State counsel for the respondents.

2. In spite of giving proper opportunities to the respondents to file affidavit-in-opposition in the present writ petition, the respondents had failed to avail the same. Hence, this writ petition is disposed of on the materials available on record.

3. The short fact of the petitioner's case is that the petitioner is a Private Limited Company having its registered office at 76A, Jatindra Mohan Avenue, Calcutta and carrying on the business of manufacturing and selling tea. The petitioner Company owns a Tea Garden, namely, Hukanpukhari Tea Estate, P.O. Tinsukia. The petitioner is liable to pay tax within the provisions of Assam Agricultural Income Tax Act, 1939 (for short Act 1939) and the rules framed thereunder.

4. Admittedly, the petitioner Company filed its return of agricultural income for the assessment year 1979-80 along with a computation sheet of such income and paid the amount of agricultural income tax thereon.

5. On the assessment, the respondent No.2, the Agricultural Income Tax Officer, Assam, Guwahati made a clear cut finding that a sum of Rs. 16,995/- is refundable to the petitioner Company under his said assessment order dated 15.5.86. The petitioner Company filed an application dated 30.6.86 to the Agricultural Income Tax Officer, Assam (Annexure B to the writ petition) to refund the said amount of Rs. 16,995/-. But for the reasons best known to the Agricultural Income Tax Officer, Assam, no refund has been made to the petitioner Company.

6. Learned counsel appearing for the petitioner submits that under sub-section (2) of Section 39 of the said Act, 1939, the State Government is duty bound to refund the excess amount paid along with the interest to the assessee if the excess amount is not paid within 90 days from the date when it becomes due.

7. It is the further case of the petitioner that State Respondents in stead of refunding the excess amount along with interest as contemplated under sub-section (2) of Section 39 of the aforesaid Act, 1939, the State respondents had adjusted the amount of Rs. 16,995/- against the assessment year 1985 and 1986. It is also further case of the petitioner Company that the interest on the refundable amount of Rs. 16,995/- had not been paid by the State respondents to the petitioner Company for the period from 15.5.86 upto the date of adjustment i.e on 31.5.97 at the rate prescribed under sub-section (2) of Section 39 of the aforesaid Act, 1939.

8. Learned counsel appearing for the petitioner submits that the rate of interest payable on the refundable amount is at the rate of 6%.

9. On perusal of the Sub-section (2) of Section 39 of the aforesaid Act, 1939, I find that the rate of interest has already been prescribed. The rate of interest as per sub-section (2) of Section 39 of the aforesaid Act, 1939 is 6% per centum.

10. Taking into consideration of the case of the petitioner as well as the submissions made by the learned counsel for the petitioner, this writ petition is disposed of with the finding that the petitioner Company would be entitled to get the interest at the rate of 6% per centum per annum on the said refundable amount of Rs. 16,995/- from 15.5.86 to 31.5.97.

11. Accordingly, the respondents are directed to pay the said interest to the petitioner Company within a period of 3(three) months from the date of receipt of this judgment and order.

12. With the above observations and directions, this writ petition is allowed.